The Weekly Arizona Miner.

VOL. XX.—NO 23. PRESCOTT, ARIZONA, FRIDAY EVENING, JUNE 9. 1882. ESTABLISHED 1864.

Arizona Miner,

PUBLISHED EVERY FRIDAY,

—BY—

CHAS. W. BEACH,

Editor and Proprietor.

The first number of the WEEKLY MINER was issued on March 9, 1864, and in this, its eighteenth year, it can, with truth, claim to be the oldest, and best newspaper in the Territory.

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SUPREME COURT OPINION.

In the Supreme Court of the Territory of Arizona.

Opinion by French, C. J.; Porter, A. J., and Stillwell, A. J., concurring in the decision.

E. FIELD ET AL., vs. M. GRAY ET AL.

This action is ejectment to recover possession of certain mining ground.

The complaint is in the usual form for ejectment.

The denials of the averments of the complaint contained in defendant's answer, except the denial as to damages, are defective.

But plaintiff having proceeded to trial on the answer without objection in these respects, we shall consider the answer as a denial of the plaintiff's allegations.

But the defendants show no right, and do not even claim any right to the premises in controversy, or to the possession of the same, but simply traverse plaintiffs' right to the same.

The plaintiffs had judgment, and defendants moved for a new trial, which was denied, and the appeal is from the judgment and from the order denying a new trial.

The statutory provisions as to new trials in this Territory, provide: "When the notice designates as the ground upon which the motion will be made, the insufficiency of the evidence to justify the verdict, or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient.

When the notice designates as the ground of the motion errors in law occurring at the trial, and excepted to by the moving party, the statement shall specify the particular errors upon which the party will reply.

If no specifications be made the statement shall be disregarded.

Statutes of 1879, page 71.

Plaintiff objects to the assignments under the statute.

But his objection cannot be justly sustained to all the assignments of error.

Besides plaintiff has expressly agreed to the correctness of the statement on motion for new trial.

The statement therefore cannot be entirely disregarded under the provisions of the statute.

"If no specifications be made the statement shall be disregarded."

The premises were located by plaintiff's grantors as a mining claim on the 19th day December, 1878.

At that time the premises were entirely vacant, open, unclaimed public land, without any adverse claim, occupancy, possession or right whatever, adverse to the plaintiffs' grantors, and so continued till after said grantors, on the first day of July, 1879, conveyed the same by deed to plaintiffs herein, who then *entered under said deed.*

The evidence is, clear, complete and entirely unquestioned on the foregoing points; There is clear, prior possession decisely established if the location by plaintiffs' grantors had any validity.

The Act of May 10, 1872, Revised Statutes of the United States, section 2320, among other provisions contains the following:

"But no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located."

This broad and sweeping provision is earnestly invoked by the appellants in this case as fatal to plaintiffs' claim in this action on the statement and record therein.

It would be sufficient answer to this, to say that for the purpose of this appeal there is a substantial conflict of testimony on this point—testimony of Fiedand others on croppings, etc.

Another and more decisive answer to defendants' position is, that defendants are not in a position to invoke this provision of the Statute against the plaintiffs in this action, for the reason that defendants claim no right to the premises whatever.

But, as the above provision of the Statute is so decisive in its terms, a brief and summary discussion of the same may not be out of place here, though not demanded in the decision of the present case.

It is well known that in many portions of the mineral regions of the United States, blind veins or lodes exist, that is, veins or lodes entirely below the surface of the ground, and often a great distance below the surface, and that in many instances these blind veins or lodes are the only kind found. Where such a state of things exist, the miner must seek the vein or ledge without attempting a location of claim till the vein or ledge is discovered, or he must attempt a location of the surface at least before such discovery, and this brings us to the consideration of the question

What right, if any, does the miner acquire as to the surface—not ledge—by such location before the discovery of the vein or ledge?

If this exact question has been authoritatively passed upon or settled by judicial decision, my attention has not been called to such decision, by counsel or otherwise, except as mentioned and discussed in this opinion.

The doctrine of prior possession or actual occupancy, without legal claim (except so far as such possession, per se, confers it) has been of late fully recognized by the Supreme Court of the United States as to public lands not mineral.

The question whether public lands enclosed and occupied by parties not claiming them under the laws of the United States, are subject to pre-emption or homestead entry, under such laws of the United States, has been settled in the negative. In the case of Atherton vs. Fowler, 6 Otto, 513, and later in the case of Hosmer vs. Wallace, 7, Otto, 575, and Trenouth vs. San Francisco, 10, Otto 251, the Supreme Court of the United States hold that no pre-emption right can be established by a settlement and improvements on a tract of public land, which was already in the possession of another. The State and Territorial Courts, have necessarily followed these decisions. Those of California, in the cases of Hosmer vs. Duggan, 6, Pacific C, law journal 615, and Davis va. Scott Ibiden 699, and in the still later case of Brown vs. Morris, decided November 29, 1881.

In case of Northern Railroad vs. Gould, 21st Cal. 254, the same Court sustained naked prior occupancy, against Congressional grant of right of way, as to claim of damages.

This is the settled doctrine as to public lands not mineral, and by analogy should be recognized where applicable to rights upon the mineral lands.

A person making a location of a mining claim fully in accordance with law and usage, acquires a right of possession to the same equivalent to an actual or possessio pedis. possession.

But what right does he acquire by making such location before the discovery of the vein or ledge.

Mr. Justice Miller, in his circuit has encountered this question more or less directly, and especially in the State of Colorado, where these blind ledges are understood to be of frequent occurrence.

But his conclusions have not reached us in an authoritative form.

In the case of Crossman et al. vs. Penderry et al., the Orion had been first located—the Penderry was located subsequently on the same ground and discovered mineral in place before the prior locators had made such discovery.

In this case, which was heard in the Circuit Court of the district of Colorado, the defendants had judgment in their favor. Mr. Justice Miller, of the Supreme Court of the United States, in his, the eighth circuit, rendering the decision, in which he is reported as saying:

"This cause is submitted on an agreed state of facts to the effect that the ground in controversy is covered by the surface lines of the Orion claim located by plaintiff, and also of the Penderry claim, located by defendant; that both locations are regular as to form; that the Orion was first located, surveyed and located; that the locators have steadly prosecuted work in the development thereof, and have discovered mineral in place.

"That the discoverers of the Penderry located subsequently to the Orion, and while the locators of the latter were in possession thereof also prosecuted work and discovered mineral in place before the discoverers of the Orion.

"The question submitted to the court is this: Can prospectors on public mineral domain acquire any right in which the law will protect them prior to the discovery of mineral in rock in place?

"If so, can plaintiffs, being prior locators, recover against defendants, who first discovered mineral on the ground in controversy?

"It is the opinion of the Court, that inasmuch as the plaintiffs allowed the defendants to enter upon their claim, and within their boundaries, and there sink a shaft, in which they discovered mineral in rock in place before a discovery by plaintiffs, and make location thereof without protest, the defendants now have the better right.

"But the plaintiffs might have protected their actual possession of their entire claim, by proper legal proceedings prior to the discovery of mineral by the defendants or either party.

"A prospector on the public mineral domain may protect himself in the possession of his pedis possessionis while he is searching for mineral."

The instructions to juries on this statute in the local Federal Courts have been various, generally giving the substance of the statute that no location could be made prior to the discovery of the vein or lode therein.

In the case of Zollards and Highland Chief Consolidated Mining Company vs. Seth Evans, October term of court, 1880, Mr. Justice Hallet, in the same district of Colorado, is reported as instructing the jury as follows:

"On the public domain of the United States a miner may hold the place in which he may be working, against all others having no better right. But when he asserts title to a full claim of 1500 feet in length and 300 feet in width, he must prove a lode extending throughout the claim."

This is indefinite as to extent of ground and in conflict with the doctrines of the decision above quoted.

If a party on the public lands, not mineral, can, by bow and spear, hold his possession to a tract of such land, however large, against a party seeking to enter under the pre-emption laws of the United States, shall not the miner hold the comparatively small tract embraced in his mining claim while continuously and industriously seeking the vein or lode believed to exist therein. (I speak of the surface only, not the vein or lode.) I am of the opinion that he can so hold the surface of the claim against all parties having no better right and eject them therefrom if any so intrude, and such I understand to be the doctrine of Mr. Justice Miller's decision above quoted.

FRENCH, C. J.

HISTORY OF THE CASE.

The claim mentioned in the opinion is situated at Tombstone. After its location, various parties entered on its limits and built houses, stores, etc. The ejectment suit was brought to eject these parties from the limits of the mining claim, and they were made defendants in this case.

An iron, bullet-proof Express car has been put on the Southern Pacific railroad; It has loop holls for riflemen.

CASTLE CREEK CORRESPONDENCE.

I must confess to a very natural shrinkage from leaving Prescott after, for me, a protracted visit of some two months. I shrank with positive aversion from anticipated evils in the shape of heat, dust and bacon and frying-pan bread. However, like all other troubles, when bravely encountered. I found these to exist mainly in anticipation.

This season, I learn, is at least one month behind time. The heat is not oppressive, dirt and its attendant, sattelite dirt, are, comparatively speaking, *non est.* The bacon is relished, and a marvelous degree of success has blessed my efforts with the frying-pan, while, *utrobile dictu*, a gentle shower of rain on this 20th day of May has subdued the dust and caused each flower and blade of grass to laugh with joy.

I traveled to this place via Walnut Grove, and from indications an excellent crop of vegetables and cereals will award the skill of its farmers. I was fortunate in meeting Mr. Duncan, of the Hot Springs, and from him derived much interesting information relative to what has been transpiring in this section during my absence.

The old "Jones" mine, formerly the property of Bob Grooms et al., but now in possession of Mr. Roderbush, of New York, is being developed as rapidly as circumstances will admit. I found freight of all descriptions enroute for the field of operations, the Hot Springs appearing to be a present depot of supplies. A smelter is at Maricopa, and not less than $10,000 worth of merchandise is in transit for Castle Creek. It is satisfactory to perceive such evidence of vigor, with faith in the country which Mr. Roderbush is helping so largely to bring into well merited prominence. Let us hope that his efforts may reap the reward to which they are entitled. I much regret that a brief visit to the Hot Springs did not afford me the desired opportunity of becoming acquainted with Mr. Roderbush. I find considerable activity prevailing on all sides concerning mines.

The most notable discovery was recently made by a Mr. McGowen. I met that gentleman proceeding to his mine with an excellent outfit, prepared like a sensible man to prove up his property without delay. At this juncture I am prevented making public the precise location thereof, but Mr. McGowen assured me of a true fissure vein, twelve feet wide, cropping boldly above the surface ground for over a thousand feet, and that although the ore was low grade at present, he felt every confidence that development would show up one of the best mines in the country. Mr. McGowen is a good, true man, and an excellent miner, and I know that all will unite in wishing him every success.

I learn incidentally that works of some description are in process of erection at Mr. Farley's camp, on West Humbug. I could obtain no particulars, so will leave this matter until I can secure from Mr. Farley himself reliable information.

Jack Evans is doing good work on his copper mine, specimens of ore from which can be seen at the MINER Office, or at Mr. Murphy's saloon. An extension on one of his mines gives "Jack" a clear 3,000 feet of copper croppings, and that a vast body of this verdant mineral is lying perdu is a very evident fact. No matter how closely it may conceal itself, it cannot long escape the skilled eye of its owner, for no more thorough and experienced miner can be found in the country. May fortune attend his earnest endeavor.

I feel it a duty to suffering humanity to call its attention to the wonderful curative properties of the waters of the Hot Springs. Some few find their way there, helpless and despairing, and yet a few weeks at farthest sees them leaving walking and leaping, and, let us hope, praising God. Anything more rejuvenating and delightful than a bath in the pellucid waters of this natural basin, it is hard to imagine, and I can, without prophetic vision, forsee the day in the near future when accommodations upon a large scale will be afforded, and it will become one of the most famous resorts of the western slope. To the tourist, Castle Creek presents a variety and grandeur of scenery peculiar to itself, while to the invalid it offers such an almost positive certainty of cure as to seem miraculous. The hot bathing is especially efficacious, I am informed, in cases of rheumatism and cutaneous diseases. Mr. Duncan and his most amiable family have labored long and earnestly this spring in planting over five acres of ground. An abundance of water for irrigation is conveyed by means of troughs resting part way upon trestles. A great variety of watermelons is to be seen looking already fat and full of future promise.

To picture to oneself the felicity of gently swaying in the hammock beneath a shade tree near the house, and being regaled upon the luscious melon, requires resort to the vocabulary of Mr. Oscar Wilde, for it would indeed be "too utterly too too." As I am the happy recipient of an invitation to "come and eat watermelons upon the Fourth of July," I conclude that at that period they will be in a condition of delicious maturity. For the first time, I fully appreciate the blessing of having a day to celebrate, and a new and delightful way presented in which to do honor to the occasion. I fear that my ideas are too exalted for the prosaic and plodding career of a prospector, but somehow being regaled upon fruit, and perhaps ambrosia, whatever that may be, by some "daughter of the Gods, divinely tall and most divinely fair," presents attractions enough to turn an older head than mine, white as it is. I doubt not that were I to receive my just deserts, "flapdoodle" would be the appropriate diet, and that, as all must know, is the "stuff they feed fools on."

Before closing what I fear the MINER will sarcastically designate as a "long and interesting effusion from an esteemed correspondent," I would ask my readers to help me in my hour of sorrow and tronble. To be brief, I have lost my horse. He was seen last upon Indian Creek, about one month ago, but the most diligent search and inquiry have failed to restore me my faithful old friend. He weighs about 1,000 pounds, is grey, covered with those small specks called "flea bites." He is branded J. H. R. as a monogram, on left hip, wore a a bell, and was shod all round. Anyone leaving word at the MINER Office as to his whereabouts will confer a very lasting obligation upon the writer. And should the MINER resent this way of slipping in a gratuitous advertisement, it will never again have an opportunity of inflicting upon its readers the sentiments and platitudes of

HUME.

TELEGRAPHIC GLEANINGS.

SOUTH HAVEN, Mich., June 5.—This evening the schooner Industry from St. Joseph capsized just north of this harbor and all on board were drowned.

JEFFERSON'S BODY.

NEW YORK, June 5.—The Times' Richmond proposition to remove the body of Jefferson from the old grave yard at Monticello to the cemetery at Washington, meets with widespread indignation in Virginia.

LEGALLY SHOT.

CHICAGO, May 31.—Reuen Lucas was shot by order of the court at Telequah, Indian Territory, at 10 o'clock to-day for the murder of McKinley last December. Both Lucas and McKinley were of good families, between whom there was a feud.

NO TRUTH IN GORHAM'S APPOINTMENT.

NEW YORK, June 5.—The Tribune's Washington special says: There is no truth whatever in the report that Hon. George C. Gorham is to be appointed Assistant Secretary of the Interior, nor that Ex-Senator Paddock is to be made Commissioner of Indian Affairs.

ALL QUIET AT SAN CARLOS.

FORT THOMAS, June 5.—The rumor of Indian depredations in the vicinity of Apache is not yet confirmed. Everything is quiet at the San Carlos sub-agency and here. Troops from this post are continually scouting, but fail to find any trails or indications of hostiles.

GUITEAU WEAKENS.

WASHINGTON, May 31.—Guiteau yesterday sent for Rev. Mr. Guins, a colored clergyman, to pray with him. He said in conversation that he was not at all certain of being hanged, but if he was he believed his soul was safe, as he did the deed at God's command to save the country. He showed much feeling.

ANOTHER INDIAN MASSACRE.

TOMBSTONE, May 31.—The dead bodies of two woodchoppers, Seymour Dey and Harry Curry, were brought here to-day from the Dragoon mountains, twenty miles distant, where they were killed yesterday. Wm. H. Gill, an eye witness, states that the men were on top a load of hay and unarmed. The Indians rode up behind and shot them dead, then unharnessed the horses and drove them off. There were eight Indians in the party. Three were engaged in the killing, two watching and the others driving the stock They were heading for Sonora and were doubtless from San Carlos. The men will be awarded a decent burial to-morrow. There is no near danger except in isolated camps of woodchoppers in the mountains. The Indians are supposed to be driving stock to the hostiles in Sonora, who were thoroughly whipped by the Mexican troops and their stock run off recently. A posse of deputy sheriffs went in pursuit of the hostiles to-night and word has also been sent to the military. Apprehension is felt for a family at Dide's ranch and for the woodchoppers and hay gatherers in the vicinity.

GUITEAU MUST SWING.

WASHINGTON, June 5.—Chief Justice Carter and Judges James and Hoger, constituting the court in banc, to-day rendered a decision upon the last motion filed by Reed in Guiteau's behalf. The Chief Justice delivered the decision as follows. "In the case of Guiteau, the Judges who listened to the argument in that case, have come to the conclusion they have exhausted their powers upon it; they have heard it patiently, fully and fairly and that a reargument would bring no other conclusion than that already arrived at and they declined to re-open the case for argument.

LIEUT. DANENHOWER.—At a late hour on Sunday night last the steamer Celtic was sighted off Sandy Hook, and a distinguished party went down on the steamboat Birlbeck from New York to receive Lieutenant Danenhower, the survivor of the ill-fated Jeannette expedition to the Arctic regions. Among the people on the Birbeck were Chief Justice Daley, Mrs. DeLong, widow of the commander of the Jeannette, and General Grant. By a special permit obtained by James Gordon Bennett, Lieutenant Danenhower was taken from the steamer to the Birlbeck, and brought to the city, where quarters had been engaged for him at the Hotel Windsor. The meeting between Lieutenant Danenhower and Mrs. De Long was very affecting. It was the first opportunity that lady had had of communicating directly with one of her husband's associates in his perilous and fatal enterprise. Mrs. De Long was almost overcome by her emotion.

We learn, by a private letter from New York, that the contract for a railroad, from Globe to about Winslow, on the A. & R. R. R., has been signed, and things look very favorable for an early start and rapid completion of this road. Our correspondent remarks, that if there could be a feasible road from Pinal, to a junction with this road, on the Salt river, it would give our people unlimited timber reserves and water power.—Pinal Drill.